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Department of
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Subject: City of Alexandria Comments for Docket Number EPA-R03-OW-2010-0736
Draft Chesapeake Bay Total Maximum Daily Load dated September 24, 2010

Thank you for the opportunity to comment on the Draft Chesapeake Bay Total Maximum Daily Load (TMDL) dated September 24, 2010. These substantive comments are being provided during the official public 45-day comment period ending November 8, 2010. Given that the Bay TMDL is structured to rely on the jurisdictions' watershed implementation plans to provide "reasonable assurance", these comments may include elements of the September 2010 Public Review Draft of Virginia's Chesapeake Bay TMDL Phase I Watershed Implementation Plan (WIP) and the subsequent Editorial and Technical Corrections (revisions) dated September 24, 2010. While the City of Alexandria (City) has taken this opportunity to provide this comment letter, the City also participates on various committees and forums of the Metropolitan Washington Council of Government (COG), the Northern Virginia Regional Commission (NVRC) and the Combined Sewer System Communities. We agree with these comments and incorporate them by reference rather than repeating them here.

We continue to work with the Virginia Departments of Environmental Quality (DEQ) and Conservation and Recreation (DCR), and the US Environmental Protection Agency to protect and enhance our local water resources and the Potomac River, with the goal of restoring the Chesapeake Bay.

1. Consideration of Financial and Economic Issues

The TMDL must consider financial and economic issues associated with implementing the measures at the local level in order for there to be Reasonable Assurance (Section 7.2, #3). There is currently no legal authority or funding for many of the measures in the WIP or the Backstop (Section 8) and no additional funding available to implement additional measures during this time of fiscal constraints. Cost effectiveness and impacts to local water quality must be considered. Diversion of financial resources will impact our already strained school system, emergency and medical response equipment and personnel, and basic services for residents.

2. Reliance on an Expanded Nutrient Credit Exchange Program

Virginia's Draft Phase I Watershed Implementation Plan (WIP) relies heavily on an expansion of the VA Nutrient Credit Exchange Program for trading between all Source Sectors. Expansion of this state

program will require a massive retooling and a great amount of resources to reach operability, and new regulations will be required. The implementation of this program must insure that there is no negatively impact local water quality. Credits generated from outside the local watershed may benefit the Bay, but has a potential of siphoning resources away from local water resources improvements in highly urbanized areas. However, effective administration of the program may provide trading needed to meet sector allocations if successfully implemented. Any existing programs based on similar principles that are designed to make water quality improvements locally should remain unaffected by such a program.

3. Non-Structural BMPs: Chesapeake Bay Preservation Act and MS4 Permit Program

The City is a Phase II MS4 stormwater community. The permit requires a lot of non-structural BMPs under the Six Minimum Controls. The WIP should consider these as "BMPs" for modeling and pollutant reduction purposes or consider halting these requirements. Uniform removal efficiencies should be assessed across the six states and the District. The Tier 2 element of Section 7.2 Accounting for Growth suggests that these existing practices will be built upon in the Phase II WIP process. We agree that these should be accounted for, but strongly suggest that these existing programs be assigned nutrient and sediment reductions soon as possible. The costs of new permit requirements, including non-structural BMPs and accounting, add to the financial burden placed on localities. Consideration of existing practices and enhanced implementation of non-structural practices should occur prior to requiring localities to implement new, more costly practices such as the backstop measure of urban stormwater retrofits.

4. Retrofits for Urban Stormwater

Chapter 8 provides Draft Backstop Measures which relies only on retrofits with respect to urban stormwater. The City has implemented some retrofits for municipal properties, as well as enhanced riparian buffers, using local Fee in Lieu monies. However, the City does not have the regulatory authority or the financial resources to implement the level of retrofits in the Draft TMDL, nor the level of retrofits in the states September 24, 2010 Technical Correction to Virginia's Draft WIP.

EPA's evaluation of Virginia's Draft WIP (Section 8) was not predicated on the subsequent WIP Technical Corrections submitted the same day as the Draft TMDL (September 24, 2010); therefore we do not know if these will be accepted in lieu of the Moderate Backstop measures. It is estimated that EPA's Backstop allocation will cost the City between $10 - $30m per year in retrofit costs alone. Additional retrofit costs will include securing easements/land acquisition and maintenance. In these austere times, funding is not available at the local level for this program. Meeting this level of retrofits will require Federal and state assistance.

Additionally, the cost of structural BMPs in urban areas will be disproportionally more expensive for infill projects given the price of urban land in the metro area. This will increase sprawl and not promote the type of Smart Growth development we are encouraging. EPA's Moderate Backstop (Draft TMDL Section 8) calls for 50% "impervious cover reductions" through "capture of rainwater for reuse". Reuse practices in dense, urban settings can not be accomplished wholly through outdoor reuse, which means grey-water systems will be required and costs will skyrocket beyond the above figure into the $50m/yr. The Federal Backstop requirement calling for 20% of area retrofitted for "infiltration" practices is also not feasible in an urban setting with near-surface impermeable clay soils.

In addition to unavailable funding, the City does not have the legal authority to mandate retrofits on private lands. Even if authority was granted to acquire rights on private property for this purpose, the

higher land values and density in the City raises the question of equity as compared to more rural jurisdictions. Broad-brush prescriptive measures will have unequal impacts. Lack of funding, timing, inequity, and physical constraints are barriers to implementing these retrofits.

Lack of funding, timing, inequity, and physical constraints are barriers to implementing these retrofits. Therefore, there is no reasonable assurance associated with this backstop measure.

5. BMP Efficiencies

The City agrees that there must be consistency across the watershed for current technology, as well as new technologies. The efficacy of new technologies should be vetted in a timely manner to allow for early adoption by localities. Consideration for local conditions should be factored into required BMPs, given differences in soils and hydrologic factors across the State or the Bay. We would ask that the WIP provide flexibility in citing and types of practices based on local knowledge and experience of what works.

6. MS4 Allocation

During Phase I of this process, EPA has provided an aggregate allocation for urban stormwater covered an MS4 permit, while Phase II will provide individual allocations for MS4 permits. EPA has not clearly addressed the distinction between TMDL WLAs and MS4 effluent limitations. Consistent with EPA's existing regulations and guidance, the Bay TMDL should clearly state that MS4s are not subject to numeric effluent limitations. Under section 402(p) of the Clean Water Act, the legal compliance standard for MS4s is based on a "maximum extent practicable" ("MEP") level of effort. Here, given the extremely stringent proposed allocations, this should be made clear in the TMDL.

7. Urban Nutrient Management

State authority and model ordinances will be required to implement elements of this program on private lands to regulate private applicators, landscape contractors, and property management maintenance crews. In order to have consistency across municipalities, the state should provide the requisite administrative resources to effectively support and fund the program at the local level where it will be most effective. Without adequate state or federal funding, the locality should not be required to administer the program.

8. Construction General Permit – Erosion and Sediment Control

The State currently administers the NPDES permit for construction activities. However, the adopted regulations (administratively suspended until after the Bay TMDL) will delegate issuing authority to the localities. The Bay TMDL and the newly adopted Effluent Guidelines will increase the stringency of the permit. If a locality is administering this permit, then the locality must receive additional funding beyond the suspended State Stormwater Regulations that do not include the Bay TMDL or Effluent Guidelines. Therefore the regulatory fees as stands are less than adequate to administer this program. Finally, the locality administering this program must receive credit for these BMPs in the stormwater WLA assigned to its MS4 permit.

9. Inconsistency of TSS loads allocated to Combined Sewer Systems (CSS)

In the EPA's evaluation of Virginia's WIP, the TSS allocation for the state is determined as 12% under the target load. While the overall TP and TN allocation is consistent with WIP in the TMDL, the TSS WLA(s) is 31% lower than data provided in data provided to DEQ and EPA and included in the WIP. EPA has offered no explanation for reducing the scientifically-based TSS WLAs proposed in the WIP.

EPA should use the TSS data provided in WIP when it establishes the final TMDL. The TMDLs are calculated for 92 segments in the Chesapeake Bay and tidal tributaries.

The CSS operates as a system; therefore it is inappropriate to disaggregate the CSS loads to smaller segments that discharge into the same TMDL segment. In Appendix Q-1 of EPA's Draft TMDL includes multiple discharge points based on EPA's interpretations of minor stream segments for CSO permit outfalls for the City of Alexandria. EPA should aggregate the CSO loads for each system.

To reiterate the argument of the CSS Communities in Virginia, a letter with detailed comments with respect to this issue will be submitted under separate cover.

10. Allocations for Proposed not Current Water Quality Standards

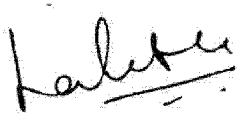
Loads in Appendices Q, Q-2 and R, are given for Proposed Water Quality Standards (WQS), not the Current WQS. Section 9.2 Tables provide some Current WQS, but only to the segment-shed resolution. Permit allocations beyond the segment-shed are based on proposed WQS. While we understand that changes are proposed for Virginia with respect to Chesapeake Bay WQS, the TMDL should be based on current water quality standards. Basing the TMDL (and the WIP) on proposed WQS may invite challenge or void the entire documents if the proposed WQS are not passed before December 31st.

11. Participation in the Draft TMDL Process and Model Inputs

Localities had very limited input in drafting the Draft TMDL or WIP. We appreciate EPA's efforts to be inclusive in the decision making, especially given the abbreviated timeline. Unfortunately, the lack of input by localities during this phase excludes local expertise from contributing to the final document. Additionally, there seems to be some confusion as to the data that was used for Virginia's input deck, which has lead to uncertainty as to whether the model is accurately accounting for our current practices. We look forward engaging in the Phase II process to help facilitate a better understanding of local contributions, local land use, and existing practices in determining local allocations.

It is our understanding that these comments will be considered for the Final TMDL. We are very appreciative for the opportunity to comment on this Draft and hope that we have provided comments that will not only assist in creating the Final Phase I TMDL, but will also begin to elucidate some of our continued concerns as we move forward in our enhanced participation in the Phase II TMDL process. These comments are substantive in nature and thus leave typographical comments to internal review. We continue to work with our local, state and federal partners to protect and restore local waterways, the Potomac River, and the Chesapeake Bay.

Best regards,



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